

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 17, 2004

D041533 Directed Electronics, Inc. v. S&S Limited, Inc.

The order is affirmed. O'Rourke, J.; We Concur: McDonald, Acting P.J., McIntyre, J.

D042056 Moyer v. New York Life Insurance Company

The judgment is affirmed. Costs to respondents on appeal. Haller, Acting P.J.;
We Concur: McDonald, J., Aaron, J.

D043676 In re Alford on Habeas Corpus

The petition is denied.

Court convened at 8:30 a.m.

Present: The Honorable Richard Huffman, Acting Presiding Justice, and The Honorable Associate
Justices Judith Haller and Cynthia Aaron
Clerk: D. E. Moore

**D041396 Joseph v. Board of Administration for the City of San Diego City Employees'
Retirement System**

Cause called on merits. Sheila M. Jacobs, Esq. argued for appellant/cross-respondent.
Edward L. Faunce, Esq. argued for respondent/cross-appellant. Ms. Jacobs replied.
Cause submitted.

Court recessed at 8:40 a.m. until 9:00 a.m.

Court reconvened at 9:00 a.m.

Present: The Honorable Judith Haller, Presiding Justice, and The Honorable Associate Justices
James McIntyre and Terry O'Rourke
Clerk: D. E. Moore

D040958 People v. Nguyen

Cause called on merits. Russell S. Babcock, Esq. argued for appellant. Melissa Mandel, Deputy
Attorney General argued for respondent. Mr. Babcock replied. Cause submitted.

D040891 Rossi Concrete, Inc. v. Skyline Wesleyan Church, Inc.

Cause called on merits. Richard John Messer, Esq. argued for respondent. Larry G. Lushanko, Esq.
argued for appellant. Cause submitted.

D040074 Brumbaugh v. Depew et al.

Cause called on merits. Steven J. Roberts, Esq. argued for appellant. Michael H. Wexler, Esq. argued for
respondent. Mr. Roberts replied. Cause submitted.

D041033 Netwig et al. v. CML Investors, L.P., et al.

Cause called on merits. Phillip Burkhardt, Esq. argued for appellant. Patricia Jo Custer, Esq. argued for
respondent. Mr. Burkhardt replied. Cause submitted.

FOURTH APPELLATE DISTRICT
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D040677 The Redevelopment Agency of the City of San Diego v. San Diego Specialty Produce, Inc.

Cause called on merits. Dennis W. Daley, Esq. argued for appellant/cross-respondent. Sandra J. Brower, Esq. argued for respondent/cross-appellant. Mr. Daley replied. Cause submitted.

Court recessed at 10:58 a.m. until 1:30 p.m.

Court reconvened at 1:30 p.m.

Present: The Honorable Judith Haller, Acting Presiding Justice, and The Honorable Associate Justices Patricia Benke and Terry O'Rourke
Clerk: D. E. Moore

D041604 Long v. Schiffman et al.

Cause called on merits. Thomas F. Feerick, Esq. argued for appellant. Loren Freestone, Esq. argued for respondent. Mr. Feerick replied. Cause submitted.

D042712 In re Daniel L., et al., Juveniles

Cause called on merits. Andrea St. Julian, Esq. argued for appellant. Alice C. Shotton, Esq. argued for minor. Kathryn Bird, Deputy County Counsel argued for respondent. Ms. St. Julian replied. Cause submitted.

D042141 Warburton/Buttner v. First Nation Gaming, LLC, et al.

Cause called on merits. Albert H. Ebright, Esq. argued for appellant. Robert Michel Dawson, Esq. was present in oral argument for respondent, First Nation Gaming, LLC. Donald Juneau, Esq. argued for respondent, Tunica-Biloxi Tribe of Louisiana. Mr. Ebright replied. Cause submitted.

Court adjourned at 2:50 p.m.

D043741 In re Bravo on Habeas Corpus

The petition is denied.

D043717 In re Singleton on Habeas Corpus

The petition is denied.

D043738 Allstate Cellular of San Diego, Inc. v. Superior Court of San Diego County/Poundris et al.

The petition is denied.

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D043675 Turner v. Superior Court of San Diego County/People

The petition is denied.

D043674 Williams v. Superior Court of San Diego County/People

The petition is denied.

D042151 Moore v. Metabolife International, Inc.

Upon written request filed by appellant, the appeal is dismissed.

D043634 Del Nero v. Superior Court of San Diego County/People

The petition is denied.

D042600 Ebbert v. Superior Court of San Diego County/City of San Diego

Let a writ of mandate issue directing the trial court to vacate its order of June 10, 2003, and to enter a new and different order (1) permitting Cruz to disclose to Ebbert the results of Cruz's investigation of witnessed derived from the identifying information disclosed to Cruz under the court's "Disclosure and Protective Order" in the Cruz matter, and (2) permitting Cruz to disclose to Ebbert the Pitchess information in the Cruz matter to the extent duplicative identifying information was disclosed to Ebbert under the court's "Disclosure and Protective Order" in the Ebbert matter. The stay of proceedings below issued by this court on August 21, 2003, is vacated on issue of the remittitur. CERTIFIED FOR PUBLICATION. McDonald, J.; We Concur: McConnell, P.J., Haller, J.

D041613 People v. Perry

The judgment is affirmed. Benke, Acting P.J.; We Concur: McDonald, J., McIntyre, J.

D042114 Kolker v. Goldberg et al.

The petition for rehearing is denied.

D037871 Sharon S. v. Superior Court of San Diego County/Annette F.

Let a writ of mandate issue directing the superior court to vacate its February 14, 2001 and March 30, 2001 orders requiring Dr. Stein to testify and produce documents regarding Sharon's communications about "domestic violence [alleged by Sharon] and its impact on [Sharon's] mental health" and to enter a new order limiting the scope of discovery to communications relating to incidents of domestic violence or impacts of such incidents on Sharon's mental health up to the date on which Sharon attempted to withdraw her consent to Annette's adoption of Joshua. In all other respects, the petition is denied. The stay issued by this court in May 2001 is hereby vacated. Each party is to bear her own costs in this writ proceeding. McIntyre, J.; We Concur: McConnell, P.J., McDonald, J.

D043274 In re Ashley R., a Juvenile

The appeal is dismissed. Nares, J.; We Concur: Benke, Acting P.J., O'Rourke, J.

D043740 In re Consiglio in Habeas Corpus

The petition is denied.

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 18, 2004 (Continued)

D043672 In re Wasko on Habeas Corpus

The petition is denied.

D043701 Tate v. Superior Court of San Diego County/Kolender et al.

The petition is denied. The stay previously issued by this court on 2/4/04 is vacated.

D043745 Paychex, Inc. v. Superior Court of San Diego County/Payroll World

At the request of petitioners, the petition for writ of mandate is dismissed.

D043611 Wakeham Construction et al. v. Workers' Compensation Appeals Board and Perez

The petition is denied.

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D041540 Hodo v. Cheryl R. et al.

The judgment is affirmed. The matter is remanded to the trial court to determine the amount of attorney fees and costs Respondents reasonably incurred in connection with this appeal. O'Rourke, J.;
We Concur: Benke, Acting P.J., Nares, J.

D042096 People v. Perez

The judgment is affirmed. O'Rourke, J.: We Concur: Benke, Acting P.J., Nares, J.

**D043320 Alicia B. v. Superior Court of San Diego County/San Diego County Health and
Human Services Agency**

The petition is denied. Aaron, J.; We Concur: Benke, Acting P.J., Irion, J.

D043320 In re Bernard D., a Juvenile

The judgment is affirmed. McDonald, J.; We Concur: Benke, Acting P.J., Aaron, J.

D039920 People v. Maxwell

The convictions are affirmed. The admission of the priors allegations are reversed and the matter remanded to the trial court to determine the truth of the allegations and for resentencing.
Benke, Acting P.J.; We Concur: McDonald, J., O'Rourke, J.

D041340 People v. Robitaille

D041722

The petition for rehearing is denied.

D041026 Wilson v. Hall, as Executor, etc., et al.

The probate court's orders entered June 20, 2002, are affirmed. The portion of Wilson's appeal taken from the probate court's orders denying her motions for reconsideration is dismissed. The respondents are entitled to costs on appeal. CERTIFIED FOR PUBLICATION. Aaron, J.: We Concur: McConnell, P.J., Nares, J.

D042572 People v. Aguilar

The judgment is affirmed. Aaron, J.; We Concur: McConnell, P.J., McIntyre, J.

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 19, 2004 (Continued)

D041858 People v. Strohauer

The conviction is affirmed. The sentence is reversed and the matter is remanded. Upon remand, appellate counsel should immediately advise the trial court in writing whether Strohauer wishes to be resentenced. If he does not wish to be resentenced, the trial court may reinstate the original judgment. If Strohauer wishes to be resentenced, the court shall hold a hearing within 30 days of the filing of the remittitur. At the hearing, the court shall give Strohauer three choices: (1) a reasonable continuance of not less than 30 days unless Strohauer agrees to a shorter continuance, to have retained counsel make an appearance; (2) the right to represent himself at resentencing (*Faretta v. California* (1975) 422 U.S. 806; or (3) the right to demonstrate to the court that his prior appointed counsel should be replaced with other appointed counsel. (See *People v. Marsden*, supra, 2 Cal.3d 118; see *People v. Trapps*, supra, 158 Cal.App.3d at pp. 272-273.)

If retained counsel appears within 30 days, or if Strohauer either chooses to represent himself and is granted that right or convinces the trial court to appoint new counsel, the trial court shall vacate the sentence and set a time for pronouncing judgment. If none of the above mentioned scenarios occur, the trial court shall make a finding indicating the reason for not setting a new time to pronounce judgment. This finding shall be accompanied by a further order that the judgment of conviction is to stand and that the vacating of judgment is denied. (*People v. Trapps*, supra, 158 Cal.App.3d at pp. 272-274.) Aaron, J.; We Concur: Benke, Acting P.J., McIntyre, J.

D043387 Bruce C. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

A petition having not been filed in accordance with this court's order of January 22, 2004, the case is dismissed.

D043598 Monica D. v. Superior Court of San Diego County/San Diego County Health and Human Services Agency

The attorney for petitioner Monica D. has notified the court on behalf of the petitioner that a Petition for Writ of Mandate under Rule 39.1B will not be filed as there are no viable issues for writ review. The case is dismissed.

D042158 People v. Higgins

D043237 Higgins v. Superior Court of San Diego County/People

The petition for writ of coram vobis, *Higgins v. Superior Court*, D043237, is consolidated with appeal *People v. Higgins*, D042158, for disposition.

D042158 People v. Higgins

D043237 Higgins v. Superior Court of San Diego County/People

The judgment is affirmed. The petition is denied. Aaron, J.; We Concur: McConnell, P.J., Haller, J.

D042193 Deasee et al. v. Metabolife International, Inc.

Upon written request filed by appellant, the appeal is DISMISSED and the remittitur is ordered to issue immediately (Cal. Rules of Court, rule 20(c)(2)).

FOURTH APPELLATE DISTRICT
DIVISION ONE
February 20, 2004

D042525 Reynolds v. Department of Motor Vehicles

Appellant has failed to file a brief after notice given pursuant to California Rules of Court, rule 17(a).
The appeal is dismissed.

D041043 People v. Klat

The petition for rehearing is denied.

D041657 Koch v. R.E. Staite Engineering, Inc.

The petition for rehearing is denied.

D041243 People v. Rigby-Fene

The judgment is affirmed. Benke, J.; I Concur: McConnell, P.J.; I Concur in the Result: Haller, J.

D039491 People v. Arias

D042853 In re Joseph Arias, Jr. on Habeas Corpus

The above-numbered appeals are consolidated for disposition.

D039491 People v. Arias, Jr.

D042853 In re Arias on Habeas Corpus

(Consolidated) The judgment is affirmed; the petition for writ of habeas corpus is denied. Benke, J.;
I Concur: McConnell, P.J.; I Concur in the Result: McIntyre, J.

D043764 Carnohan v. Superior Court of San Diego County/Newcomb

The petition is denied.

D043780 Offner v. Superior Court of San Diego County/Platypus Wear Inc. et al.

The petition is denied.